

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310. (This is a GIL).

October 20, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated August 31, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY intends to begin selling two new products in the state of Illinois. These products will be marketed by sales personnel calling on doctor's offices and hospitals within the state. The purpose of this letter is to request a determination regarding whether or not these products are exempt under Illinois state sales tax laws.

1. PRODUCT1

PRODUCT1 is an apparatus for strengthening the pubococcygeal muscles (i.e, pelvic floor muscles). This is for improved sphincter or urinary control, and improving erectile dysfunction. More particularly, this invention relates to a biofeedback device that guides a user through an exercise program for the pelvic floor muscles.

This device is a therapy for the over 18 million people in the US suffer from urinary incontinence. Many forms of incontinence are linked to poor muscle tone in the pubococcygeus or pelvic floor muscles. The pelvic floor muscles originate from the symphysis pubis and extend posteriorly encompassing the urethra, the vagina, and the rectum. The pelvic floor muscles often work in conjunction with other muscles, such as the sphincter urethrae, to control urination. Many pathological conditions, such as cystocele (hernial protrusion of the urinary bladder through the vaginal wall), rectocele (hernial protrusion of part of the rectum into the vagina), uterine prolapse (protrusion of the uterus through the vaginal orifice), and bladder and sexual dysfunctions, may be caused by a weakened condition of the pelvic floor muscles. It is widely known that treatment of these pathological conditions generally includes development of the muscle tone in the pelvic floor muscles.

States usually allow exemptions for sales of prosthetic aids, hearing aids, eyeglasses and artificial devices purchased to correct or alleviate physical incapacity in humans. It is believed that this product would fall into this broad category.

2. PRODUCT2

PRODUCT2 are radioactive seed implants used as a therapy for prostate cancer. Seed implants consist of a radioactive source inside a titanium shell. One seed is about the size of a grain of rice. The seeds emit very low energy radiation, which is primarily absorbed in the treatment area or 'target' tissue immediately surrounding the seed. The advantage of modern implant techniques is the avoidance of surgery. The seeds are placed in the prostate by needles through the perineal skin (the area of the body between the scrotum and the rectum between the legs) under anesthesia in an operating room environment. Anywhere from 40 to 130 seeds may be implanted throughout the entire prostate.

This is a product sold to licensed physicians, surgeons and health facilities. It is used in the treatment of their patients, therefore, it is believed to be non-taxable.

Since these are new products we ask for a determination about exemption, to keep in compliance with sales tax laws. Please contact the undersigned at ##### if additional information is necessary.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities. A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

In general, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. Some of the products specifically listed in the regulation as qualifying for the reduced rate are home glucose monitors, home blood glucose test strips and related supplies used to treat human diabetes. Other products that directly substitute for a

malfunctioning part of the body include urological catheters, leg bags, ostomy pouches and drain bags, and mastectomy prosthetic devices such as forms and bras. Please note that supplies, such as non-sterile cotton swabs, disposable diapers, toilet paper, tissues and towelettes and cosmetics, such as lipsticks, perfume and hair tonics do not qualify for the reduced rate. Sterile dressings, bandages and gauze do qualify for the reduced rate.

The PRODUCT1 listed in your letter appears to be used in the therapy and treatment of patients and does not directly substitute for a malfunctioning part of the body. If this is the case, it is subject to the high rate of tax. Due to the limited amount of information included in your letter, we are unable to make a determination on the PRODUCT2. We doubt that this item is a medical appliance because it is used in the therapy and treatment of patients and does not directly substitute for a malfunctioning part of the body. It is possible, however, that the PRODUCT2 may be considered a medicine or drug. As stated above, we do not have enough information to make this determination.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.